THE DEPUTY CHAIRMAN: No, please... *(Interruptions)*...

SHRI M. S. GURUPADASWAMY: You have to allow me also... *(Interruptions)*...

THE DEPUTY CHAIRMAN: No, please... *(Interruptions)*...

SHRI M. S. GURUPADASWAMY: Why not?... *(Interruptions)*...

SHRI RAM JETHMALANI: Why not?... *(Interruptions)*...

SHRI M. S. GURUPADASWAMY: Why not? I am also a Member of this House.... *(Interruptions)*... we are also Members of this House... (Interruptions)... We want to seek clarifications only and nothing else. Why don't you allow us? *(Interruptions)*....

SHRI PARVATHANENI UPENDRA: Please allow us... *(Interruptions)*...

THE DEPUTY CHAIRMAN: Mr. Dipen Ghosh you are not starting at all... *(Interruptions)*...

SHRI DIPEN GHOSH: What can I do?... *(Interruptions)*...

THE DEPUTY CHAIRMAN: All right. I adjourn the House now. The House is adjourned for lunch till 3-00 P.M.

The House then adjourned for lunch at one minute past two of the clock.

3.00 P.M.

The House reassembled after lunch at two minutes past three of the clock, The Vice-Chairman (Shri Jagesh Desai) in the Chair

THE CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL, 1988

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

In cases of corruption, particularly those attending large deals involving foreign parties, as well as economic offences, allegations are generally made that money illegally obtained is deposited in foreign Banks by offenders. For successful investigation and prosecution of such cases, the cooperation from foreign governments, where the offenders or witnesses reside, becomes necessary. The Government of India have been seriously contemplating entering into agreement with foreign Governments, including the Government of Switzerland for mutual assistance in criminal matters.

Agreements with foreign countries in regard to mutual assistance in criminal matters are entered into on the basis of reciprocity. Mutual assistance in criminal matters requires cooperation with the law enforcement agencies in foreign countries in regard to locating witnesses, obtaining information from persons who are under investigation and investigation of crime not involving the exercise of any measure to compet any person to answer any question, etc. This is secured by the provisions of the agreement entered into with the foreign Government concerned. In regard to taking of evidence or production of documents using compulsory measures for the purpose of criminal proceedings, the criminal law of both the contracting countries must, however, contain appropriate provisions.

There are already provisions in sub-section (3) of Section 285 and clause (b) of sub-section (2) of section 290 of the Cr.P.C. which incorporate the principle of reciprocity in regard to taking of evidence of witnesses on commission in India and in a foreign country. However, section 105 of the Cr.P.C., which provides for reciprocal arrangements in regard to issue of processes, does not at present enable a court in India to issue summons or warrant to be served or executed outside India, or *vice-versa*. It has been considered necessary to amend this section to

enable a Court in India to issue summons or warrant for production of documents using compulsory measures to a court in a foreign country, and *vice-versa*.

Sir, since the above legislation will enable the Government of India to obtain documents and other evidence from witnesses residing in foreign countries for the prosecution of offenders, I commend the Bill for the consideration of this august House.

The question was proposed.

SHRI RAM JETHMALANI (Karnataka): Mr. Vice-Chairman, Sir I do not share the view of the hon. Minister that this is an absolutely non-controversial measure. Firstly, this Bill has nothing to do with the object which the Minister has mentioned, namely, tracing of foreign accounts, etc. Incidently, that part of the statement does not appear in the Statement of Objects and Reasons which are appended to the Bill which we have received. This is something new which was said. I believe that it is said only for the purpose of public consumption. But I would like to ask the hon. Minister to enlighten us as to how this measure ever enables foreign accounts to be traced.

Now, so far as this Bill is concerned, there are two parts of it. One is an amendment to Section 105 and the concerned, whatever be my doubts second part is an amendment to subsection (2). So far as the first part is concerned, whatever be my doubts about the efficacy of that amendment, I would accept it because I do not see that any Indian interest can be harmed by that, though I am quite doubtful whether any foreign Government is going to accept that part of the amendment which you are making unilaterally here without due treaty arrangements.

The second part of the amendment, according to me, is a most dangerous amendment. If the implications which I am about to mention have not been realised, then I hope they will be realised. If they have been realised and yet this Bill has been introduced as a non-controversial measure, then I am afraid it will call for some pungent comment. Let us first of all see what the second part is. The second part talks of three kinds of processes of foreign courts being executable directly without any further safeguards. One is a warrant of arrest. A warrant of arrest is obviously meant for apprehending accused persons. The warrants of arrest from foreign countries, when they are sought to be executed in this country, must be executed on the principles which are incorporated in the famous law of extradition. We have got an Indian Extradition Act. That Indian Extradition Act makes a provision with due safeguards for the enforcement and execution of warrants of arrest of accused persons which have been issued by foreign courts in countries with which we have treaty arrangements. Every Indain citizen in this country is entitled to the protection of Article 21, namely, he cannot be deprived of his liberty without a fair procedural law and the Indian Extradition Act provides a fair amount of protection of the legitimate interests of anybody who is sought to be arrested in execution of a warrant of arrest. There are provisions that the man who is sought to be arrested on the basis of a foreign warrant will be taken to a Magistrate. In fact, foreign warrants are not directly executable. The foreign Government has to apply to the Central Government and the Central Government has to ask the local Magistrate to issue a warrant. Then that Magistrate has to apply his mind whether the requisition has been made for a civil case, whether it is in relation to acts which are real offences under the law of the issuing State and also offences under the law of India. Criminal laws differ. In some countries, some acts which we regard as totally innocent are criminal offences. Therefore, a Magistrate has to ensure that the warrant of arrest is for securing the attendance of a person who is accused of what is known in International

[Shri Ram Jethmalani]

Law, as an extraditable offence. There are several offences which are not extraditable. For example, offences of a political nature are not extraditable. If this main fulcrum or the essential provision is eliminated, it will bring in Article 21 which will render the whole Statute *ultra vires* and be repugnant to any system of fair procedure that has no magisterial or judicial superintendence over the execution of foreign warrants. Tomorrow, if you enter into a treaty with Panama, with Nicaragua, with Haiti, with countries where there is no independent judiciary countries where there are no procedural and constitutional rights to any accused person at all, first a warrant is issued. As soon as it arrives here—and the provision is so stupid, Sir, pardon the strong words which I am using—as soon as the man is arrested, Sections 80 and 81 of the Cr.P.C. apply. The man has to be sent to the court which issues the warrant. All intervening safeguards has been taken away. And after all the law of Criminal Procedure Code has been examined, examined time and again, by the Law Commission. The Law Commission examined it for ten years, and ultimately we had the new Criminal Procedure Code of 1974 which came into effect on the 1st of April, 1974. Even the Law Commission did not find that this provision should be introduced because they obviously thought that provisions which are today existing in the Indian Extradition Act are sufficient and adequate for that purpose. I suggest that before this measure is accepted, as it is stated innocuous which it is not and non-controversial which it is not by the reason of the very fact that I am raising this controversy, this matter should be allowed to be examined by the Law Commission of India. Let the Law Commission report or, if not, let it go to a Joint Parliamentary Committee for report.

Now, Sir, the second point is that it allows search warrants to be executable, search warrants issued by any land. You might tomorrow have some kind of a treaty with any State which wishes to get the property of an Indian citizen. Now, even in India, when a search warrant is executed, the property goes to the court which issues the search warrant. Therefore, thereafter you have the right to go and say, "return my property". You have the right to say that "my property ought not have been seized." You have a right to go to the High Court and the Supreme Court if you have wrongly been deprived of property. But I have never heard this kind of an absurd provision that a foreign search warrant comes from a court in America or England or France or Germany—I am now talking of those uncivilized countries from where a warrant comes —and my property will be taken away. And there is no intermediate protection. The property must be sent to the court which issues the warrant from abroad. I have never seen such a draconian provision, I have never seen such an absurd provision. I have never seen such a provision which runs so completely foul of the Indian Constitution and the rights of the accused persons.

Then, Sir, the third is the summons to witnesses. It is all right if an Indian court issues a summons and is executable by a foreign country. I have no particular grievance against it. If the foreign court is prepared to do it for you, well and good, it is an achievement for India. But what about us? People from abroad can obtain summons for giving evidence against people. Then, what am I supposed to do? Supposing I am served with summons tomorrow from a court in Panama. I am supposed to go there and obey that summons. There is no protection, there are no rules, there is no protection that am I being taken to a jurisdiction where I can return, am I being taken to a jurisdiction where there are provisions for safety. Are there provisions where I

will not be interrogated contrary to article 20 of the Constitution and be made to incriminate myself? Are there provisions which ensure that once our Indian citizen goes as a witness, he will be able to come back to this country and he will not be perpetually detained there for something which is of an incriminating nature? So, Sir, all these provisions, with respect I submit, are totally absurd, a complete violation of the Indian Constutional system. And I do not see why the normal law of extradition is not found necessary, found adequate for the purpose for which successive Law Commissions have found it adequate and suddenly the Home Minister should have decided that this kind of a provision may be brought into our statute book. And, Sir, I suggest that it puts also the cart before the horse. But, first of all, find out those civilized countries. Even in the days of the British, there were the Commonwealth countries which had a similar legal system, similar protection, similar procedures where warrants of one Commonwealth country were executable in another country. But here there is now a blanket provision. The Government of India can tomorrow enter into a contract with a State—some are even now non-States which are recognised as States—tomorrow you might enter into a contract with Uncle Arafat, and his warrants will be executable in this country. I mean, this is a kind of dreadful procedure, I shudder to think. And I am surprised that the Minister should have said that this is a non-controversial measure. He wanted to do what happened in the British Parliament. The British Parliament had a provision to pass an Act relating to the constitution of a Corporation. So a huge Bill of 550 clauses was handed over to Parliament. It was drafted by a local county clerk and the country clerk was an unhappily married man. Now in the 549th clause he had put the words that the marriage of the county clerk is hereby dissolved. The sleepy Parliament passed that statute. This is exactly what is sought to be perpetrated on us. They expect that we are sleepy and we will be lulled into sleep. Then there is a facade created that this has something to do with the tracing of the Swiss accounts. How do you trace Swiss accounts by making summons to a witness executable in a foreign country? For that you have got commissions issued. Commissions are issued under reciprocal arrangements and once the commissions are executed the evidence will be gathred. But how does this help trace a bank account? If you convince me that it will help you to trace the Swiss bank accounts, I will give my wholehearted support to this measure and perhaps even sit down and suggest measures of making it more effective. But this has nothing of the kind. That is only a smoke-screen.

SHRI DIPEN GHOSH (West Bengal): Mr. Vice-Chairman, Sir, I do not or cannot agree or disagree with either Mr. Chidambaram or with Mr. Jethmalani.

SHRI P. CHIDAMABARAM: You will be safe if you agree with me.

SHRI DIPEN GHOSH: Mr. Ram Jethmalani seems to be an eminent lawyer and Mr. Chidamabaram appears to be an advocate because only today nothing he wanted to establish on how many counts he would like to advocate. But Sir, whether it is a controversial or a non-controversial matter, before I go into it I would like to draw the attention of the House and, through you, Sir, and particularly of you that even the Members of this House were not given sufficient time to go through it and to decide whether it was controversial or non-controversial...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You are very clever. You can immediately say whether it is controversial or non-controversial.

SHRI DIPEN GHOSH: ... because it pertains to the Criminal Procedure Code and at least I had never an occasion to be tried under the Criminal Procedure Code, and this has become the practice of late.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): But you have a stout commonsense.

SHRI DIPEN GHOSH: Mr. Advani is here. He is a senior Member of this House It is not unusual that suddenly the Department of Parliamentary Affairs decides to push through certain legislative activities without even going through the Business Advisory Committee or the norms and procedures to be followed in the House. This particular piece of legislation, whether this Session will be asked to deal with it or pass it, it was never placed before the BAC, and nobody, the party or the group, which are represented here, were given to understand that this has to be done. There must be some decorum, some decency, some adherence to the norms on the part of the Government. Is it necessary that every norm has to be thrown to winds every law, every rule has to be thrown to winds? What would have happened? Would the heavens have fallen down if this piece of legislation was brought forth in the next session? Mr. Ram Jethmalani perhaps because of certain legality did not try to trace the leasons for bringing forth this piece of legislation. But I know what the background is. But for all these months, the Government sat tight over the issue, and suddenly on the last day, or a day previous to the last day, they have brought it up. I don't know whether tomorrow they will go to Lok Sabha and after the Private Members' Business, they will try to push it through. Mr. Jacob, our colleague, the Minister of State for Parliamentary Affairs is not here...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He has just gone.

SHRI DIPEN GHOSH: At least the Minister present here will convey to him and I hope the other Opposition Members here will share my feelings, that this was not fair. I have already admitted my misfortune. The other day, Mr. Dinesh Singh said he was fortunate not to be a lawyer; but it is my misfortune not to be a lawyer; otherwise, perhaps I could have in a better way confronted Mr. Chidambaram. However, I want to seek certain clarifications specifically and I hope, as happened in the forenoon, Mr. Chidambaram will not fight shy of replying to those points.

I take on its face value the statement which was made by Shri Chidambaram while piloting this Bill, and I do not find apparently any objection in making an enabling clause in any statute of our country, for the Government to apprehend the law-breakers both financial and political, if such law-breakers in order to get away from the law, take refuge abroad or for that matter in any place outside the territory of the court where they live. For that I do not have any objection because obviously we have been demanding it. Till yesterday, a person is Indian; today he becomes a non-resident Indian; tomorrow still he gets the benefits of sharing in the equity shares as a director in an Indian company. So, some law is necessary, some enabling clause is necessary to track down such people and apprehend such people. And this is in everybody's knowledge. Even last year the Government...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You wanted to seek some clarifications.

SHRI DIPEN GHOSH: I am coming to that. The Government itself admitted last year also that through various clandestine methods, certain Indians have amassed wealth outside our country and made deposits in Swiss banks and in certain other banks in some unheard of countries, the tax havens, and some details of the accounts were given. IMF or the World Bank study had revealed as

to what extent the amount of wealth was deposited in the Swiss banks. This money is earned through various irregular and unlawful methods, either through smuggling or through under-invoicing and over-invoicing in respect of exports and imports or through commissions, kickbacks, bribes, in respect of purchases by the Government and this money is deposited in such banks, in such countries where the tentacles of Indian law cannot reach. When some such activities had come to the knowledge of the people of the country, the representatives of the people of the country, Members of Parliament, raised it on the floor of Parliament. Then, a statement was made. An assurance was given. It was Mr. Eduardo Faleiro who had promised an amendment to the Chiminal Procedure Code so as to enable the Government of India to have an exchange of information on a reciprocal basis. Last year, the Finance Minister made a statement in the Lok Sabha. Yesterday, I referred to it. An exercise was going on between the authorities of the Indian Government and the Swiss Government and some kind of a bilateral treaty was being sought to be signed. The Deputy Governor of the Reserve Bank of India Mr. Amitabh Ghosh was sent to Sweden to discuss the matter with the Swiss authorities so that some kind of a bilateral agreement could be entered into for ensuring reciprocal co-operation.

Sir, now, almost a year has elapsed. Suddenly, why and how the Government had preferred to bring forward this piece of legislation for getting it passed at the fag end of the Session, I do not know. The statement which Mr. Chidambaram has made is all right. It is an enabling clause apparently. The question of service of warrant, service of order is there. But only when prosecution is started, the question of service of warrant of arrest and other things which have been mentioned here will arise.

For the last one year, it has been talked about. The Minister of Finance, Mr. Tiwari, had assured. The Minister of State for Finance, Mr. Gadhvi, has assured. The Minister of State for Finance, Mr. Eduardo Faleiro, had promised. But this amendment has been brought forward after so much time. Is it because that you want to project before the people of the country that because there was not a clearly-defined clause in the Criminal Procedure Code, you could not apprehend those Indian who had amassed wealth in Swiss banks and elsewhere through clandestine methods about which people are talking, as if because this amendment was not there, so they did not do it? And after this—he has made out in his statement—they will be able to do it because it is an enabling clause. But yesterday I read out, and I read out today also, from Mr. Tiwari's statement:

> Swiss authorities would not permit generalised inquiry or furnish ordinary information about the customers' accounts unless specific and appropriate court orders are obtained in Switzerland.
>
> The Swiss Federal Act on International Mutual Assistance in Criminal Matters (IMAC) would enable mutual assistance where acts in respect of which assistance is sought satisfy criteria for dual criminality and the State seeking assistance guarantees reciprocity to the Swiss authorities. If the above conditions are satisfied, Swiss authorities would entertain request for assistance in criminal matters under the provisions of IMAC and suitable proceedings would be initiated in Swiss courts for obtaining information from the concerned bank.
>
> Tax evasion or violation of foreign exchange regulations would not be regarded as criminal offences by Swiss authorities.

Then Mr. Tiwari had stated:

> Assistance from the Swiss authorities under IMAC would be obtained even without entering into a bilateral treaty/agreement with Switzerland provided that the requirements of dual criminality and reciprocity are satisfied.

[Shri Dipen Chosh]

So he said: "would be obtained". Again he stated and I quote:

> ...and pending conclusion of such treaty or agreement, entering into a Memorandum of Understanding with Swiss authorities for assistance in specific cases of Indians having accounts in Swiss banks. We are intimating our Ambassador in Switzerland to inform the Swiss authorities of this decision. Expeditious further action within the framework of Indian and Swiss laws will be taken so that we are able to obtain the requisite information against offenders and proceed against them effectivey.

So Sir, Mr. Chidambaram has tried to project that in order to enable the Government of India to apprehend the economic offenders taking refuge in foreign countries, they have brought this amending Bill. But the fact is that even though this amending Law was not there, the Government of India could apprehend them and at least they assured us that they were going in the right direction. So suddenly now this has been brought. Is it because after 2 o'clock today, it has been declared and announced, and yesterday night the Leader of the House appealed and today it has been declared, to close down the shutter on the shop of Bofors. They have declared it; Mr. Chidamabaram himself had also declared it while intervening in the debate, "thus far and no further". After that, after declaring the Bofors issue closed, now Mr. Chidambaram has come out with this piece of legislation to project before the people of our country as if they were very much interested in apprehending the economic offenders taking refuge abroad. Actually, Sir, I have no quarrel with this piece of legislation.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You want this to be done.

SHRI DIPEN GHOSH: But I have serious doubts about the intention because of what he said while moving the Bill. This Government, whether it is there or not, has no intention to apprehend the economic offenders taking refuge abroad. It is not that this Government has no power, nor is it that if power is given to this Government, the next day it will go and catch them.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You wait and see.

SHRI DIPEN GHOSH: Let me see. After all, we have been seeing for the last forty years and we will have to wait further and see, obviously. As long as we cannot unseat them we will have to wait and see. It is true that we have been waiting and seeing for the last forty years. I do not know how old Mr. Chidambaram was when Pandit Jawaharlal Nehru was saying here that he would hang blackmarketeers from the nearest lamppost. Mr. Baitha is here. He is a fairly old Congressman and he comes from Bihar, notorious for all types of Mafias... (*Interruptions*)...He is not one of them; I personally know him. That is why, Sir, the intention is *mala fide*.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): When they do not

bring it you say they should do it, when they bring it you say why they are bringing it.

SHRI DIPEN GHOSH: There is no quarrel about that, obviously. I think we will have to give them a chance. What else can we do until and unless people pull them down? And that day is coming, because people have come to know. I have read it in the newspapers that at Kamaraj Nagar Mr. Chidambaran said—I do not know whether he said it at all:

> "Ayodhya is where Ram is,
> Congress is where Rajiv is."

But he forgot to utter another line which I may help him to add. After those two lines:

> "Ayodhya is where Ram is,
> Congress is where Rajiv is"

he may add "Congress is where corruption is."

Thank you, Sir.

... (*Interruptions*) ...

SHRI YALLA SESI BHUSHANA RAO (Andhra Pradesh): Mr. Vice-Chairman, Sir, this Bill which seems to be so innocent is being pushed through in Parliament at this late hour. It is a belated measure and if it had been brought a year back we would have congratulated the Government on this.

After closing the Bofors issue, as the Government says it, if the Goverment is bringing this Bill so belatedly, then it is only for public consumption and not with any serious intention of bringing back economic offenders from foreign countries.

My first point is, how can this Bill help bring back economic offenders that are present in every country of the world? What are the agreements between different countries? There are civilised countries and uncivilised countries. Which are the agreements that you are going to implement with this Bill? That is my first objection.

Nextly, as far as other things are concerned, the necessity of extradition arises out of many circumstances. There is a general desire on the part of all countries that no serious crime should go unpunished. The Indian Extradition Act of 1903 lays down certain principles and procedures also. There must be extradition punishment whether the crime is in the country or not. So, this Act depends upon other consequential, reciprocal arrangements. Unless that is clarified, this is a simple addition to the criminal law. So, I request the Government that they must give some more time to think over this. I just went to the library. For reference they have given me three, four books. Without some more time, can it be possible just to think and speak over this? So, it is an eye-wash. The intention, I feel, is only for public sympathy alone. So, with a mixed feeling, I also appreciate the Bill though it is faulty.

Thank you, Sir.

SHRI CHITTA BASU (West Bengal): So far as the Statement of Objects and Reasons which has been appended to the Bill is concerned, to me it appears to be very laudable and commendable. But the whole thing is that the country has witnessed several upheavals during the last few years, particularly centring on the question of stashing our wealth in foreign countries, getting it deposited in foreign banks. All this has been witnessed by us, and there have been attempts on the part of us to unveil the recipients, to bring to book those persons who have committed economic offences and taken shelter outside the country. We have been all along demanding that there should be some initiative on the part of the Government to find out, to bring to book those who are engaged in criminal activities.

Comrade Dipen Ghosh has mentioned that the Government announced that bilateral agreements will have to be entered into in the matter of seeking

[Shri Chitta Basu]

assistance in matters of criminal offences committed abroad, and the purpose of this Bill is to enable it. But I want a clarification or I want to know the intention of the Government. Even after a bilateral agreement the question of dual criminality remains. Eminent lawyers can explain it. If we want to have some information from the Swedish Government, that must be a crime here and that must be a crime there.

SHRI DIPEN GHOSH: Or the same crime in which both are involved.

SHRI CHITTA BASU: Therefore, the question of dual criminality is of vital or crucial importance. Here lies the political will of the Government. If you don't want to accuse a person or prosequte a person here, how do you expect even after the bilateral agreement to get assistance from foreign countries to get clues to secure evidences or to apprehend him or bring him back here or pursue with the case? I can give many examples. The case of Ajitabh is there, the Swiss Bank operations are there and the crucial point is that there must be some kind of criminal activity here and the Government should proceed against that person in this country. Then you can seek assistance from a foreign country for further pursuance of the matter.

Now, for the last few years the Government has not shown their political will or they did not muster courage to do that. Even in the matter of Bofors—I want to raise that thing in this connection—some amount has been paid. He agrees. That amount was paid in a Swiss bank. That is also agreed. The accounts were also named. That is also known. But we cannot identify the recipient or the operator of that account, because there is a comercial confidentiality or secrecy clause involved. They have all taken shelter under that. Even in the case of Bofors if the Government had bonafide intentions of pursuing the matter, according to him, there were ways open for it. For that I want to mention Article 11 of the Swiss Act that "a person pursude means not only the one who has already been convicted and sentenced to punishment, but also any person suspended or under investigation." Now, had there been a case filed against anybody of them, about whom we know, then we could have approached the Swiss Bank or the Swiss Government to render assistance to us. Even in this connection I want to mention one remark of Prosecutor Ringberg. He expressed his inability for proceeding with the case because he is reported to have said and I quote:

> "A judicial inquiry, similar to your Parliamentary inquiry, concerning possible bribery offences has not commenced in India."

Had there been a similar inquiry or a similar case here, according to Ringberg he would have also proceeded with the case of Bofors. Therefore, the point which I want to drive home is that it is not merely a question of amendment of the Cr. P.C. What is needed is the political will of the Government. I would like to know whether they are actually interested in bringing to book those offenders, those who have indulged in economic offences. Therefore, I do not oppose the step. I am also of the view that this step should have been taken much earlier. Here lies my suspicion that they have not taken this meaasure earlier only to stall the further action in finding out the real culprit. And if they continue in this way, the bilateral agreement will not be signed. And even if the bilateral agreements are also signed with any foreign country, you will not proceed against anybody here. And if you do not proceed against anybody here and if the crucial point of dual criminality is not met, then this amendment would be of no use, would be infructuous and as my friends have already said, it is merely a smoke screen. I feel that now the hon. Minister of

Defence has declared that the Bofors chapter is closed. It is closed because JPC has given a report and you have all accepted the report of JPC. But JPC's word is not the final word. Many things are bound to come. Many big heads may roll and in order to stall that, in order to create a smoke-screen, even at the fag end of the Session, you are bringing a legislation only to create an impression that you are very serious in the matter of bringing the criminals to book Your political will is known to us. Had you been serious, you would have taken this kind of a measure much earlier. You might have finalised the bilateral agreement with Sweden or any other country much earlier and you might have proceeded along this line. But you have not done so. But in spite of that, I say, it is a good measure. At least, it is a desirable measure.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Let us see the outcome.

SHRI CHITTA BASU: A desirable measure will not have desirable results unless a desirable change or a shift in the Government policy is also there. I would ask the Minister to show that the Government has got the requisite will. If they have got the requisite determination, if the Government has got a semblance of honesty, even without an amendment of this nature, they could have brought to book many criminals who have damaged our prestige or have done harm to our economy and have done immense injury to our cause. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Matto, you want to speak?

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): I have given my name already. Mr. Vice-Chairman, Sir, I support the Code of Criminal Procedure (Second Amendment) Bill, 1988. On the one hand, if you see the discussion that took place here for the last two-three days or earlier also, we were trying that we should be able to nab all criminals. On the other hand, if the Government comes out with a Bill to enforce that, we should all welcome it. There should not be any inhibitions or it should not be stretched to an unimaginable limit. This should be taken into consideration.

While I support the Bill, I would like to ask a few questions from the hon. Minister. This Bill is based on the fundamental principle, that is agreement with foreign countries in regard to mutual assistance in criminal matters. I would like the hon. Minister to inform us in how many countries, reciprocal arrangements have so far been made or in how many countries offers have been made for such arrangements. The second point that I would like the hon. Minister to let us know is that after the Bill is passed and the Government is empowered, will it deal with all countries of the world and try to have reciprocal arrangements and in that connection, what are the steps that the Government intend to take?

Finally, Sir, I would like to know with regard to the summonses that are served outside the country, are there any local conditions attached to it, through whom the summons have to be served because there is a provision here that the Government may notify? I feel that different countries may have different laws for serving summons through different magistrates or authorities. It cannot be an omnibus sort of a provision that the Government can make. Will the hon. Minister clarify this point in his speech and try to enlighten us with regard to the salient features of the Bill so far as they apply to nabbing the criminals outside the country?

SHRI P. CHIDAMBARAM: Mr. Vice-Chairman, Sir, I am grateful to hon. Members for the views and the

[Shri P. Chidambaram]

comments expressed by them as well as for extending support to the Bill although some of them extended support only in principle and questioned our intentions as well as our political will. Sir, I maintain that this is a non-controversial Bill and I wish to explain the circumstances in which this Bill is being brought before this House. Sir, Section 290 of the Criminal Procedure Code applies the provision of sections 286, 287 and 288 to two classes of courts, judges or magistrates. The first is, any court, judge or magistrate, exercising jurisdiction within an area in India to which this code does not extend as the Central Government may by notification specify. The second is, any court, judge or magistrate exercising jurisdiction in any such country or place outside India as the Central Government may by notification specify. Therefore, the power to issue commissiones for examination of witnesses under Chapter XXIIIB of the Criminal Procedure Code is available to the courts in India in a territroy outside the territories to which the code applies as well as the court outside India, the only condition being that the courts must be notified by the Central Government. This is the provision relating to commissions.

Then we have section 285 which provides that if the witness is within the territories to which this code applies, the commission shall be directed to the Metropolitan Magistrate within whose local jurisdiction the witness is to be found. Sub-section 2, if the witness is in India but in a State or an area to which this code does not extend, then to such specified courts.

Sub-section—3: If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such countries or places for taking the evidence of the witnesses in relation to criminal matters, the commission should be issued in such forms and directed to such officer or court as may be specified. There are therefor already *pari materia* provisions in the Criminal Procedure Code regarding commissions. They are contained in Chapter XXIIIB of the Criminal Procedure Code and the relevant sections are 284 to 290. However, section 105 of the Criminal Procedure Code, as the House knows deals with four matters. Two are summons and two are warrants. One is summons to accused person; second is warrant for the arrest of an accused person; third is summons to a person requiring him to attend and produce a document and fourth is a search warrant. As the provisions stand today in section 105, sub-section, it applies only to a Court in the territories to which this code extends desiring that the summons or the warrant shall be served within the local jurisdiction of a court in India but outside the territories to which this code extends. We are adding one more contingency outside India as provided in section 290. Simultaneously sub-section (2) provides for a court in the said territories to receive for service or execution a summons or a warrant issued by a court in India but outside the territories to which this code extends. We are adding another situation, namely a summons or a warrant received in India from a court situate outside India. This will bring section 105 in line with the scheme contained in section 284 to section 290, particularly section 290. The hon. Member, Mr. Jethmalani, quite rightly raised the question about the safeguards. I would have felt happy if he had conceded to me the same anxiety to look after the safeguards. I am as concerned about the safeguards and the liberty of Indian citizens and the fundamental rights and the right to fair procedure. The first safeguard is built into section 105 and we are not touching that provision at all. His criticism was directed against section 105 sub-section (2). He asks

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if a warrant of arrest is issued by a foreign court to an Indian citizen what will he do. Yes, it will be treated as a summon or a warrant received by the Indian court from another court in the said territories for service or execution within its local jurisdiction. And if the warrant of arrest has been executed, the accused will be dealt with under sections 80 and 81 of the Code of Criminal Procedure. If the search warrant has been executed, it will be dealt with under section 101. It is needless to say that sections 80 and 81 provide for production before a magistrate. I do not want to go into those details.

SHRI RAM JETHMALANI: Sections 80 and 81 talk of the court issuing in which case it will become a foreign court. The man will have to be produced before the foreign court.

SHRI P. CHIDAMBARAM: If you allow me...

SHRI RAM JETHMALANI: If you do not want an interruption, I do not interrupt.

SHRI P. CHIDAMBARAM: I am not objecting. Since you have raised the questions, I am saying let me finish. I do not even characterise it as an interruption. Section 80 says Sir, when a warrant of arrest is executed outside the district in which it was issued, the person arrested shall unless the court which issued the warrant is within thirty kilometres from the place of arrest or near an Executive Magistrate, District Superintendent of Police or Commissioner of Police, within the local limits of whose jurisdiction the arrest was made or unless security is taken under section 71, be taken before such magistrate or District Superintendent or Commissioner. A foreign court will obviously be thirty kilometres away from India. I cannot think of a foreign court within thirty kilometres from India. He will be taken before such Magistrate, District Superintendent or Commissioner. Then section 81. The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal and custody to such court. (*Interruptions*) One minute.

SHRI RAM JETHMALANI: To such court . . .

SHRI P. CHIDAMBARAM: I am not as well versed in criminal law as you are. But I am trying to read it and trying to explain. The Commissioner will direct his removal and custody to such court provided that if the offence is punishable and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner—that is the Indian Magistrate, Indian Superintendent or Indian Commissioner—or a direction has been endorsed under section 71 on the warrant and any such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent of Commissioner shall take such bail or security as the case may be and forward the bond to the court which issued the warrant. The bail will Tbe granted here and the bond will be transmitted to the the issuing court.

SHRI RAM JETHMALANI: Only in bailable offences.

SHRI P. CHIDAMBARAM: I am coming step by step. I will read to you the rest of it.

> "Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate subject to the provisions of Section 437, or the Magistrate of the district in which the arrest is made, on a consideration of the information and the documents referred to in sub-section (2) of Section 78, to release such person on bail."

[Shri P. Chidambaram]

In a bailable offence the Commissioner or the SP can grant the bail. In a non-bailable offence, bail is granted by the Sessions Judge concerned. I will try to answer the further questions.

What about Article 20 and Article 21? Some honourable Members raised this question. I am trying to answer the question to the best of my ability. Firstly, the whole thing is an enabling provision. It is based upon a contract with another State. We must have an agreement with another State. As of today discussions are under way to have letters exchanged between India and Switzerland. Drafts of the letters have been prepared. We do not have any on-going discussions with any other country. I can assure the House, and I have no hesitation in saying it, one cannot contract with another State which does not have a system of jurisprudence similar to ours; obviously we are not going to contract with a State which does not have a system of law, a system of criminal law, bail, etc. as we have. So, first of all, we will contract only with the State which has a system of jurisprudence which is acceptable to us, which is more or less similar to ours. The example I can give is, we can certainly have a contract with England which has a system of jurisprudence like ours, we can have a contract with Switzerland which has a system of jurisprudence like ours.

Secondly, the principle of double criminality. There will be no occasion when this provision, this law, can be applied unless the principle of double criminality is involved and this is made very clear. It has to be an offence both under the Indian law as well as under the foreign law. We cannot countenance, no sovereign government can countenance, exposing its citizen to a law which makes his conduct punishable when it is not punishable under Indian law.

Then there is the principle of reciprocity. We will not agree to anything unless there is a reciprocal agreement by the other country on what they will do and what they will not do.

On the three principles of comparable jurisprudential systems, double criminality and reciprocity I think most of the objections will be taken care of.

Now on the question of Articles 20 and 21. I had made it clear in my introductory speech, this will apply only to testimony of a non-compulsory nature which rules out testimony of self-incriminating nature. Article 20 will be taken care of. What are the safeguards in Article 20? If I remember right, the safeguards in Article 20 are: rule against double jeopardy, rule of *autrefois acquit* and rule against self-incrimination. These are three fundamental elements in a system of jurisprudence. If the other contracting nation does not have these three principles in its law, if it does not have a jurisprudential system which is compatible with our jurisprudential system, then we will certainly not enter into a contract with that country. we will certainly not enter into a contract with any country which does not have the three elements of Article 20.

As far as Article 21 is concerned, it is the fundamental right to liberty Again I assume that a comparable jurisprudential system will have an equally efficacius provision regarding liberty. And we will certainly not enter into a contract with any country which does not have a provision *pari materia* with our Article 21. These are matters where it has to be negotiated by way of a treaty or exchange of letters or agreements. And, as I said, the only country with which we are going to have such contract is Switzerland. There are no other on-going negotiations and I

hope that this law will be passed to enable us to do what we say we want to do. Of course, questions can be raised about political will. But that again goes into a territory on which Mr. Dipen Ghosh revels. He likes to accuse us of a lack of political will. I would only assert that we have the political will. (*Interruption*) Thank you for the support. Judge us by the way we implement the law; don't judge us at this stage when we are bringing the law.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): The question is—

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): We shall now take up the clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 1—Short Title

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): There is an amendment by the Minister to clause 1.

SHRI P. CHIDAMBARAM: Sir, I beg to move:

'That at page 1, lines 3 and 4, for the brackets and words "(Second Amendment)" the brackets and word "(Amendment)" be substituted.'

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I shall now put clause 1, as amended, to vote.

The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI P. CHIDAMBARAM: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

RE. HEALTH OF SHRI RAM AWADHESH SINGH, MEMBER, RAJYA SABHA

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): There was some anxiety regarding the health of our colleague, Shri Ram Awadhesh Singh. We have received some message from the hospital that he is quite well and he is taking his food. We wish him a speedy recovery.

SHRI DIPEN GHOSH (West Bengal): We would like to be assured that he was not administered any wrong injection.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He is taking his food and his health is quite good.